

1 L1CPRAPC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

3 ANTHONY RAPP AND C.D.,,

4 Plaintiffs,

5 v.

20 CV 9586 (LAK)  
Telephone Conference

6 KEVIN SPACEY FOWLER,

7 Defendant.

8 -----x  
9 New York, N.Y.  
10 January 12, 2021  
11 10:01 a.m.

12 Before:

13 HON. LEWIS A. KAPLAN,

14 District Judge

15 APPEARANCES VIA TELECONFERENCE

16 GAIR, GAIR, CONASON, RUBINOWITZ, BLOOM, HERSHENHORN, STEIGMA  
17 Attorneys for Plaintiffs

18 BY: PETER J. SAGHIR

19 KELLER/ANDERLE LLP

20 Attorneys for Defendant

21 BY: CHASE SCOLNICK

22 JENNIFER KELLER

23 AND

24 SHER TREMONTE LLP

25 BY: ERICA WOLFF

L1CPRAPC

1 (The Court and all parties appearing telephonically)

2 THE COURT: Okay. Could I please have appearances?

3 MR. SAGHIR: Peter Saghir from Gair, Gair, Conason for  
4 the plaintiffs, 80 Pine Street, 34th floor, New York, New York  
5 10005.

6 THE COURT: Good morning.

7 MR. SCOLNICK: And good morning, your Honor. This is  
8 Chase Scolnick of Keller, Anderle on behalf of Mr. Fowler, and  
9 I'm joined by Ms. Jennifer Keller of my office. Her pro hac  
10 vice has been filed and it's pending.

11 MR. KELLER: Good morning, your Honor.

12 THE COURT: Good morning.

13 MR. KELLER: This is Jennifer Keller.

14 THE COURT: Good morning. Okay. We have a court  
15 reporter --

16 MS. WOLFF: Your Honor, if I may just announce my  
17 presence. It's Erica Wolff of Sher Tremonte, co-counsel for  
18 the defendant, Mr. Fowler.

19 THE COURT: Good morning.

20 Do we have our court reporter?

21 THE COURT REPORTER: Yes, your Honor. Good morning.  
22 This is Rose.

23 THE COURT: Good morning, Rose. How are you?

24 THE COURT REPORTER: I'm doing well. How are you?

25 THE COURT: Good.

L1CPRAPC

1           Since we have a reporter, unless I call on you by  
2 name, in which case you can just start speaking, you'll have to  
3 preface everything you say with your name.

4           I looked at your 26(f) plan, and by and large it's not  
5 the way I do things. I tend to set a schedule right out of the  
6 box, and I don't see why this case is an exception.

7           So let me hear from the plaintiff as to how much time  
8 they think is necessary for discovery.

9           MR. SAGHIR: Thank you, Judge. Well, as your Honor  
10 knows, we have the jurisdictional discovery issue, and as a  
11 matter of clarification, with respect to the memorandum that  
12 was issued by your Honor, was it anticipated that the  
13 jurisdictional discovery would proceed concurrently with the  
14 general discovery, or was it anticipated that the  
15 jurisdictional discovery would be done in a short timeline and  
16 then to the extent a motion was renewed to remand, then that  
17 would be heard at that time?

18           THE COURT: They are going to proceed concurrently.  
19 That doesn't mean you can't do the jurisdictional stuff  
20 quickly, if you can figure out how economically to do it. But  
21 I'm not a great believer in starting off a lawsuit with a  
22 structure about phased discovery because my experience of 26  
23 years is that usually leads to fights over whether things fit  
24 into one phase or another.

25           MR. SAGHIR: Sure. I don't -- the plaintiff does not

L1CPRAPC

1 anticipate that more than six months of discovery is necessary  
2 in this case.

3 THE COURT: What about the defendant?

4 MR. SCOLNICK: Your Honor, this is Chase Scolnick. We  
5 believe that more time is required --

6 THE COURT: Why?

7 MR. SCOLNICK: -- especially in light of Covid. It's  
8 our preference that with respect to depositions of the parties,  
9 given the nature of the case, that they should proceed in  
10 person and not remotely.

11 And we are, hopefully, rounding the bend on Covid, and  
12 we expect that the vaccine should be here in short order. And  
13 we plan to take advantage of that and would like to proceed as  
14 quickly as possible with discovery.

15 However, that is the holdup, but I would ask that  
16 discovery cutoff be later this year, perhaps October or  
17 November.

18 THE COURT: Well, look, we're all hopeful about the  
19 vaccinations. I imagine that there are a quarter of a billion  
20 people in the United States who hope to have it very quickly.

21 I have no idea whether anything remotely approaching  
22 that is feasible, and so I think it's going to be necessary to  
23 proceed on the assumption that the depositions, unless  
24 everybody gets lucky with the vaccine, will probably be remote,  
25 virtual.

L1CPRAPC

1                   MR. SCOLNICK: Thank you. I'm sorry to interrupt,  
2 your Honor.

3                   THE COURT: I'm sorry, who was that?

4                   MR. SCOLNICK: I'm sorry. It's Chase Scolnick, again,  
5 your Honor. The only other issue I'd like to bring to the  
6 Court's attention regarding the discovery schedule is that we  
7 are unaware of one of the plaintiff's identities. That  
8 certainly will impact the discovery schedule.

9                   We've been unable to investigate any of the claims  
10 with respect to the unknown plaintiff so far, and I'd ask that  
11 the Court take that into account. We're seeking that he be  
12 unmasked as soon as possible.

13                  THE COURT: Let's begin with the easiest part.  
14 Mr. Saghir, is there any reason why the defendant shouldn't be  
15 told immediately, under a suitable protective arrangement, who  
16 the plaintiff is?

17                  MR. SAGHIR: No. And for clarity, your Honor, I did  
18 submit a proposed stipulation to the defendants that would have  
19 given them the plaintiff's date of birth, true identity,  
20 address and Social Security number, in exchange for proceeding  
21 by pseudonym.

22                  So we are ready to provide the name of our client;  
23 however, he is a victim of sexual abuse, and for various  
24 reasons he is proceeding anonymously or by pseudonym. But  
25 absolutely, your Honor, we have already said we would give the

L1CPRAPC

1 name, so long as we have suitable protections in the place that  
2 protect his identity.

3 THE COURT: Well, look, is there an objection to that  
4 from the defendant?

5 MR. SCOLNICK: Your Honor, this is Chase Scolnick.  
6 Certainly we do not object to plaintiffs disclosing the name.  
7 However, we don't think there's any reason or justification  
8 that he should be permitted to proceed anonymously.

9 Your Honor, we're not talking about a child victim.  
10 These are allegations that occurred, I believe, about 40 years  
11 ago. The same individual, it's my understanding, has been  
12 speaking to the press anonymously. So he has been able to make  
13 allegations, we believe false allegations, that are damaging  
14 against my client's reputation.

15 There's no reason, at this point, that he should be  
16 able to proceed anonymously. If he'd like to file a motion,  
17 we'll oppose that motion, but we think that anything short of  
18 that will greatly impact our ability to investigate the case  
19 and conduct discovery.

20 THE COURT: All right. The plaintiff is to reveal,  
21 plaintiff and his counsel, the particulars as enumerated by  
22 Mr. Saghir a moment ago of the identity and address and so  
23 forth of the plaintiff who's been identified only as C.D.

24 If you can't, in the next 48 hours, work out a  
25 suitable stipulation on confidentiality, until the question of

L1CPRAPC

1 whether the plaintiff C.D. can proceed anonymously or  
2 generally, you'll let me know, and I will bear the order that I  
3 might think appropriate. So we're going to get that all done  
4 this week.

5 Now, if the plaintiff wants to avoid public disclosure  
6 in the lawsuit of the identity of C.D., then they'll have to  
7 make a motion under, if memory serves, rule 10, and you're  
8 perfectly free to do that, Mr. Saghir, and we'll see what  
9 happens on that.

10 MR. SAGHIR: I'm sorry, Judge. If I could just ask  
11 for a clarification, please? You want us to work with the  
12 defendants to work out a suitable stipulation. If we do that,  
13 obviously, we don't need to file the motion, but to the extent  
14 we're not able to work out a stipulation, we can go ahead and  
15 file the motion to proceed by pseudonym; is that correct?

16 THE COURT: Look, let's be entirely clear. Right?  
17 Stipulation or no stipulation, you're going to disclose to the  
18 defendant and his counsel, in confidence, information about who  
19 C.D. is and where he lives and so forth. That's going to  
20 happen this week.

21 If you can reach a stipulation concerning simply  
22 obligation of the defendant and his counsel to hold that in  
23 confidence, unless otherwise ordered by the Court, more power  
24 to you. If you can't get that organized by Friday, you're to  
25 let me know, and I'll enter an order. That's totally separate

L1CPRAPC

1 from the question of proceeding anonymously, unless you can  
2 reach an overall agreement that resolves both questions.

3 But one way or the other, you're going to be informing  
4 the defense as to the name, address and so forth of the  
5 plaintiff, and you're going to do it by the close of business  
6 Friday. Are we clear?

7 MR. SAGHIR: Just, if there is no stip that can be  
8 entered into, are the defendants prohibited from disclosing the  
9 name until there has been either an order by your Honor or a  
10 motion filed?

11 THE COURT: Yes.

12 MR. SAGHIR: Thank you. Understood.

13 THE COURT: Okay. Well, now, give me an idea,  
14 Mr. Saghir, as to what the scope of discovery, in terms of  
15 witnesses, documents, things of that nature, is.

16 MR. SAGHIR: Sure. We anticipate, obviously, a very  
17 short discovery schedule in terms of documents and witnesses.  
18 We anticipate, obviously, there's our two clients, Mr. Fowler's  
19 deposition, Mr. Spacey's deposition. I don't really anticipate  
20 any other depositions that we will be seeking at this time.

21 As far as discovery for documents, there's obviously  
22 medical records pertaining to the psychological injuries  
23 suffered by the plaintiffs that will be disclosed, but we don't  
24 anticipate that this is going to be a complex or difficult  
25 discovery.

L1CPRAPC

1                   THE COURT: Okay. Thank you.

2                   And defense, please, what are you anticipating?

3                   MR. SCOLNICK: Thank you, your Honor. This is Chase  
4 Scolnick again. Your Honor, we believe that, obviously, the  
5 parties will be deposed. There's going to be written discovery  
6 served on the parties, and we also seek to depose any  
7 percipient witnesses to the alleged abuse.

8                   It sounds like plaintiff has identified some medical  
9 records; so we'll seek to conduct discovery there, and perhaps  
10 depose any percipient witnesses relevant to those issues and  
11 then perhaps any expert testimony, if necessary.

12                  THE COURT: Say that again, please, the last thing you  
13 said?

14                  MR. SCOLNICK: Yes, your Honor. Perhaps if there is  
15 expert testimony, if there is expert testimony that is noticed,  
16 then, of course, we'll seek to depose those experts.

17                  THE COURT: Does the plaintiff expect to have expert  
18 testimony?

19                  MR. SAGHIR: Yes.

20                  THE COURT: One or more than one?

21                  MR. SAGHIR: Probably two different -- we would call  
22 two different experts on the medical issues, on the  
23 psychological injuries.

24                  THE COURT: And when are you going to be ready to make  
25 your rule 26 disclosures on the experts?

L1CPRAPC

1                   MR. SAGHIR: We'd ask for 45 days on that, your Honor,  
2 for the expert disclosures.

3                   THE COURT: Do you need more than that, Mr. Scolnick?

4                   MR. SCOLNICK: That's suitable, your Honor. We'd ask  
5 for 60 days after that, or even 45 days after that, for our own  
6 expert disclosure.

7                   THE COURT: Okay. Anything else I should anticipate  
8 here?

9                   MR. SCOLNICK: Your Honor, this is Chase Scolnick  
10 again. Not from defendants.

11                  THE COURT: Yes, go ahead.

12                  MR. SAGHIR: Nothing from the plaintiffs, your Honor.

13                  THE COURT: Okay. From the defendant?

14                  MR. SCOLNICK: Chase Scolnick again, your Honor, no.

15                  THE COURT: Okay. Good enough. I thank you and  
16 proceed.

17                  As far as the trial date, I should add, it is really  
18 completely impossible at this moment to schedule. We have  
19 extraordinarily extensive Covid protections in place in the  
20 courthouse. We are certainly not calling any petit juries  
21 before the middle of February and that could be extended.

22                  At this moment, given the status of the virus, I  
23 believe my understanding is correct, but I believe we have only  
24 two courtrooms that can accommodate in-person proceedings with  
25 suitable social distancing and other protections, and we have

L1CPRAPC

1 quite a backup of cases.

2 Now, I anticipate that as months go by, that number  
3 will increase and possibly rapidly. As recently as two or  
4 three weeks ago, we had seven such courtrooms and I, in fact,  
5 tried a jury case the end of November. So we'll see what  
6 happens.

7 MR. SCOLNICK: Your Honor, this is Chase Scolnick  
8 again. Given that trial is not going to be set at this time --

9 THE COURT: Could you hold for a moment, please?

10 MR. SCOLNICK: Yes, your Honor.

11 (Pause)

12 THE COURT: I'm back. Mr. Scolnick?

13 MR. SCOLNICK: Thank you, your Honor. This is Chase  
14 Scolnick again. Given that trial dates -- a trial date is not  
15 going to be set in light of Covid, at this point, I would ask  
16 that the Court delay expert disclosure, instead of the 45 days  
17 that the plaintiffs requested, six months?

18 THE COURT: No, I don't think so. Let's get this case  
19 ready, and then when a window opens, we'll take advantage of  
20 it. I don't have any trial-ready civil cases on my calendar at  
21 the moment. I have a couple of trial-ready criminal cases, but  
22 almost the minute you get Covid clearance, I could be ready to  
23 try this case. So I don't want to stretch it out.

24 Furthermore, in this time period, the opportunity for  
25 unexpected delays arises; so I don't want to stretch it out

L1CPRAPC

1 now.

2           Okay, folks. Thank you very much.

3           Andy, I will speak with you in a minute.

4           (Adjourned)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25